

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:17-CR-19-1H
No. 2:17-CR-19-2H

UNITED STATES OF AMERICA,

v.

ANDRE RAMON COOPER, and
MICHAEL LEVERETTE,

Defendants.

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ORDER

This matter is before the court on defendants Andre Ramon Cooper and Michael Leverette's motion to dismiss count two of the indictment against them. The government has responded, and this matter is ripe for adjudication.

The indictment in this matter charges Cooper and Leverette in three counts: Count One charges Hobbs Act Robbery in violation of 18 U.S.C. § 1951(b)(3); Count Two charges aiding and abetting the carrying and brandishing of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c); and Count Three charges them with aiding and abetting the possession of a firearm

after having been convicted of a crime punishable by imprisonment for a term exceeding one year.

Defendants move to dismiss Count Two, the 924(c) count, arguing that the underlying Hobbs Act Robbery does not categorically qualify as a crime of violence under § 924(c).

This court has explicitly held that Hobbs Act robbery qualifies as a crime of violence under the force clause. United States v. Evans, No. 5:15-CR-57-1H, 2015 WL 6673182, at *4 (E.D.N.C. Oct. 20, 2015). While the Fourth Circuit has not yet ruled on this exact issue, other courts of this district and circuit have held the same. See United States v. Whitfield, 5:17-CR-76-1D, D.E. #41 (E.D.N.C. Jan. 5, 2018); United States v. Godard, No. 4:16-CR-30-1FL, 2017 WL 280703, at *5 (E.D.N.C. Jan. 20, 2017); United States v. Clarke, 171 F. Supp. 3d 449, 453 (D.Md. 2016); United States v. McDaniels, 147 F. Supp. 3d 427, 433-34 (E.D.Va. 2015); United States v. Merinord, No. 5:15-CR-136-1BO, 2015 WL 6457166, at *2-5 (E.D.N.C. Oct. 26, 2015). In light of this conclusion, the court need not reach the issue of whether the residual clause in 18 U.S.C. § 924(c) is unconstitutionally vague.

Finding no reason to alter the undersigned's previous holding on this issue, and finding that Hobbs Act robbery is a crime of violence, the defendants' motion to dismiss is DENIED.

This 30th day of January 2018.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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